

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CRAIG GAMBLE, et al.

Plaintiffs,

v.

BOYD GAMING CORPORATION,

Defendant.

Case No. 2:13-cv-01009-JCM-PAL
Case No. 2:13-cv-01043-JCM-PAL
Case No. 2:13-cv-01801-JCM-PAL

ORDER

This matter is before the Court on the parties' failure to file an unredacted version of Defendants' expert report in support of their renewed Unopposed Motion for Preliminary Approval of Settlement (Dkt. #250) (the "Motion"). The parties filed the Motion attaching numerous exhibits, including Exhibit G, Defendants' 43-page expert report prepared by Ali Saad, Ph.D. *See* Mot. Ex. G (Dkt. #250-14). All but three paragraphs of the report are redacted, and an unredacted version was not submitted to the Court along with a motion to seal. An attorney for Plaintiffs represents that the report is "redacted pursuant to the parties' stipulation on treatment of confidential documents, (Stip. Part IX, ECF No. 99; *see also* Prot. Order, ECF No. 104)." Decl. of Michele R. Fisher (Dkt. #250-1) at ¶ 17. However, this statement does not justify redaction from the public record or redacting the information to make it unavailable to the court when it is submitted in support of a motion for approval of a settlement.

In its July 11, 2014 Order (Dkt. #104), the Court advised that although the parties' blanket protective order was approved to facilitate discovery exchanges, compliance with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), would be required to overcome the presumption of public access for judicial files and records. The parties may not rely on the blanket Protective Order (Dkt. #103) alone to redact documents as the protective order did not contain a finding that any specific documents are

1 secret or confidential to overcome the presumption of public access. The mere fact that one
2 party designated information as confidential under a protective order does not satisfy *Kamakana*.

3 The Ninth Circuit has held that parties seeking to maintain the confidentiality of
4 documents attached to dispositive motions must show compelling reasons to overcome the
5 presumption of public access to judicial files, records, motions, and any exhibits. *See*
6 *Kamakana*, 447 F.3d at 1179–80; *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d
7 1092 (9th Cir. 2016) (standards courts apply to sealing requests turn on the relevance of the
8 documents to the substantive merits of a case—not the relief sought). If a sealing order is
9 permitted, it must be narrowly tailored. *Press-Enterprise Co. v. Superior Ct. of Cal., Riverside*
10 *Cty.*, 464 U.S. 501, 512 (1984). The sealing of entire documents is improper when any
11 confidential information can be redacted while leaving meaningful information available to the
12 public. *In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011).

13 Pursuant to *Kamakana*, LR 10-5 of the Local Rules of Practice, and the Court’s July 11,
14 2014 Order (Dkt. #104), the party designating any document as confidential must submit a
15 memorandum of points and authorities presenting articulable facts that identify the interests in
16 favor of the documents’ continued secrecy, and showing that these specific interests outweigh
17 the public’s interests in transparency. The Court appreciates that the expert report was redacted
18 to comply with the Protective Order (Dkt. #103), but a statement that the expert report was
19 redacted pursuant to the parties’ stipulation regarding confidential documents does not establish
20 compelling reasons for redacting or sealing the report. Accordingly, the Court will allow the
21 party designating the expert report as confidential seven (7) days to file an unredacted expert
22 report and a memorandum of points and authorities establishing compelling reasons to support
23 its filing of a redacted and unredacted expert report.

24 Additionally, the Court has not received a courtesy copy of the Renewed Motion for
25 Preliminary Approval of Settlement (Dkt. #250) and exhibits, which totals 671 pages, although it
26 has been requested by chambers several times. The Local Rules of Practice state that “a filer
27 must provide to chambers a paper copy of all electronically filed documents that exceed 50 pages
28 in length, including exhibits or attachments.” D. Nev. LR IC 2-2 (as amended May 1, 2016); *see*

1 also D. Nev. LR IA 10-3(i). Paper copies and exhibits must be appropriately tabbed, indexed,
2 and placed in a binder. *Id.* The Court therefore orders Plaintiffs to submit a courtesy copy to the
3 undersigned's chambers within seven (7) days.

4 Accordingly,

5 **IT IS ORDERED:**


6 1. The party designating the expert report as confidential shall have until **May 24, 2016**:

7 A. To file on the *public docket* in CM/ECF, a motion to seal including a
8 memorandum of points and authorities and any supporting declaration or
9 affidavit to make a particularized showing of compelling reasons why the
10 expert report should remain under seal.

11 B. To file *under seal* in CM/ECF, a "Sealed Exhibit" containing the unredacted
12 expert report prepared by Ali Saad, Ph.D., Mot. Ex. G (Dkt. #250-14), and
13 link the sealed exhibit to its motion to seal.

14 2. Plaintiffs will deliver a courtesy copy of the renewed Unopposed Motion for
15 Preliminary Approval of Settlement (Dkt. #250), including all exhibits (without
16 redactions) to the undersigned's chambers no later than **May 24, 2016**.

17 DATED this 17th day of May, 2016.

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20 PEGGY A. ZEEN
21 UNITED STATES MAGISTRATE JUDGE
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